



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Edward F. Novak, Esq.
Mariscal Weeks McIntyre & Friedlander, PA
2901 N. Central Avenue, Suite 200
Phoenix, AZ 85012-2705

NOV 10 2008

RE: MUR 5968
David S. Van Denburgh

Dear Mr. Novak:

On January 31, 2008, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations. On October 29, 2008, the Commission found, on the basis of the information in the complaint, information provided by your client, and publically-available information, that there is no reason to believe your client violated 2 U.S.C. §§ 441a and 441f, provisions of the Act, and 11 C.F.R. §§ 110.1(b) and 110.4(b) of the Commission regulations. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Shonkwiler", with a long horizontal line extending to the right.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 5968**

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7 **RESPONDENTS:** John Shadegg's Friends and
8 Ian A. Macpherson, in his official capacity as treasurer
9 Leadership for America's Future PAC and
10 Keith A. Davis, in his official capacity as treasurer¹
11 John Dawson
12 David S. Van Denburgh
13

14
15 **I. INTRODUCTION**

16 This matter was generated by a complaint filed with the Federal Election Commission by
17 Maria Weeg, Executive Director of the Arizona Democratic Party. See 2 U.S.C. § 437g(a)(1).

18 The complaint pertains to \$5,000 contributions that John Dawson and David S. Van
19 Denburgh each made to Leadership for America's Future PAC ("LEAD PAC"), a nonconnected
20 "leadership" PAC controlled by Congressman John Shadegg, and LEAD PAC's use of these
21 funds to contribute \$10,000 (primary and general election) to Shadegg's re-election campaign
22 committee, John Shadegg's Friends ("the Shadegg Committee").

23 Complainant alleges that Dawson and Van Denburgh, who already had made the
24 maximum legal contributions to the Shadegg Committee, made excessive contributions to the
25 Shadegg Committee in the name of LEAD PAC, in violation of 11 C.F.R. §§ 110.1(h) and
26 110.4(b), *see* 11 C.F.R. § 110.1(b) and 2 U.S.C. §§ 441a and 441f; that the Shadegg Committee
27 and its treasurer failed to timely refund the contributions in violation of 11 C.F.R. § 103.3(b), *see*
28 2 U.S.C. § 441a(f); and that LEAD PAC's solicitation and administrative expenses constitute in-
29 kind contributions to the Shadegg Committee. Respondents all deny the allegations. They assert

¹ On March 6, 2008, Leadership for America's Future PAC filed an amended Statement of Organization in which Keith Davis replaced Ian A. Macpherson, the treasurer. Commission records show that Macpherson was the treasurer and Davis was an assistant treasurer of the PAC at the time of the activity described in this report.

1 that Dawson and Van Denburg's \$5,000 contributions to LEAD PAC should not be aggregated
2 with their prior contributions to the Shadegg Committee, that the contributions were not made in
3 the name of another, and that LEAD PAC was a bona fide multicandidate committee that
4 supported multiple candidates during both the 2006 and 2008 election cycles.

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. Background**

7 John Shadegg, a seven-term Congressman, is currently a candidate for re-election in
8 Arizona's 3rd Congressional District. In addition to his registered principal campaign committee,
9 Congressman Shadegg controls LEAD PAC, a nonconnected "leadership" PAC, which is
10 registered with the Commission as a qualified multicandidate committee. *See* 2 U.S.C.
11 § 441a(a)(4)(A).

12 LEAD PAC registered with the Commission as a nonconnected committee on January
13 21, 1999 and notified the Commission of achieving multicandidate status on May 15, 2005.
14 During the 2006 election cycle, LEAD PAC made over 100 contributions to over 60 federal
15 candidates and the National Republican Congressional Committee ("NRCC"). During the
16 current election cycle, LEAD PAC made the two previously mentioned \$5,000 contributions to
17 the Shadegg Committee, a \$5,000 contribution to John McCain's Presidential campaign
18 committee, and three contributions totaling \$7,000 to House candidate Timothy Bee's campaign
19 committee (for the primary and general election).

20 LEAD PAC's only receipts during the reporting period in which it made its two \$5,000
21 contributions to the Shadegg Committee were two \$5,000 contributions received on June 15,
22 2007, one from John Dawson and one from David S. Van Denburgh. Dawson and Van
23 Denburgh had previously each made two \$2,300 contributions (for the primary and the general

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1 elections) to the Shadegg Committee on May 31, 2007 and June 2, 2007, respectively, for an
2 aggregate total of \$4,600 each. Approximately two weeks later, on June 26, 2007, LEAD PAC
3 made the two \$5,000 contributions to the Shadegg Committee (for the primary and general
4 elections).² The Shadegg Committee refunded the two \$5,000 contributions on January 23,
5 2008, the same date as the complaint in this matter.

6 LEAD PAC, the Shadegg Committee, and Macpherson, as treasurer, submitted a joint
7 response to the complaint that included affidavits from Dawson, Shadegg, and Macpherson,
8 while Van Denburgh submitted a separate response. Shadegg's affidavit states that he met
9 separately with Dawson and Van Denburgh on or about May 29 and 31, 2007 to solicit
10 contributions to both the Shadegg Committee and LEAD PAC. The Congressman claims that he
11 told both donors the contributions to LEAD PAC were being solicited to help elect a Republican
12 majority to Congress and that he did not tell them that the funds he solicited for LEAD PAC
13 would be used to support his own candidacy. Both Dawson and Van Denburgh submitted
14 affidavits which corroborate Shadegg's account, and each states that he did not know that his
15 LEAD PAC contribution would be used to support the Shadegg Committee. Shadegg also states
16 that he authorized LEAD PAC to make the two \$5,000 contributions to the Shadegg Committee
17 on or about June 26, 2007.

² Disclosure reports show that LEAD PAC had \$2,975 cash on hand at the beginning of the reporting period and total receipts of \$10,000 during the period. LEAD PAC was left with \$2,066 cash on hand at the end of the reporting period, after making the contributions and paying its accountant.

B. Analysis

1. Excessive Contributions and Contributions in Name of Another

Complainant alleges that Dawson and Van Denburgh each made a \$5,000 excessive contribution to the Shadegg Committee in violation of 11 C.F.R. §§ 110.1(b) and 110.1(h), *see* 2 U.S.C. § 441a, and a contribution in the name of LEAD PAC in violation of 11 C.F.R. § 110.4(b), *see* 2 U.S.C. § 441f. Complainant also alleges that the Shadegg Committee and Ian A. Macpherson, its treasurer, should have investigated and refunded the questionable \$5,000 contributions within 30 days of receipt. *See* 11 C.F.R. § 103.3(b) and 2 U.S.C. § 441a(f).

The Act limits an individual's contributions to a candidate or his authorized committee to an aggregate of \$2,300 per election for the 2008 election cycle. 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b)(1). Contributions to a multicandidate committee are limited to \$5,000 per election during the cycle. 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. § 110.1(d). A multicandidate committee in turn is similarly limited to contributing an aggregate of \$5,000 per election to a candidate or his authorized committee.³ 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.2(b)(1). In order to prevent circumvention of these limits, as well as to insure disclosure, the Act also prohibits contributions made in the name of another. *See* 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b).

An individual may contribute to a candidate or the candidate's authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election without aggregation, as long as (1) the political committee is not the candidate's principal campaign committee or other

³ The Commission has determined that a candidate's "leadership" PAC is not affiliated with the candidate's authorized committee, and therefore each committee has separate contribution limits. *See* 11 C.F.R. § 100.5(g)(4) and *Explanation and Justification for Regulations on Leadership PACs*, 68 Fed. Reg. 67013 (December 1, 2003).

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1 authorized political committee or a single candidate committee; (2) the contributor does not give
2 with the knowledge that a substantial portion will be contributed to, or expended on behalf of,
3 that candidate for the same election; and (3) the contributor does not retain control over the
4 funds. 11 C.F.R. § 110.1(h)(1)-(3).

5 Significantly, there is no allegation or information indicating that Dawson or Van
6 Denburg retained control over the funds after they made the contributions to LEAD PAC. *See*
7 11 C.F.R. § 110.1(h)(3). Therefore, the contributions could only be aggregated, and thus
8 considered excessive, if they had actual knowledge that LEAD PAC would use their respective
9 \$5,000 LEAD PAC contributions to contribute to the Shadegg Committee.

10 The Commission has specifically recognized that “[a]lthough a contributor might
11 reasonably infer from the solicitation as a whole that some portion of his or her contribution [to a
12 PAC] might be used to support [the candidate], such an inference alone does not suggest that the
13 [contributor] had ‘actual knowledge’” as to how their funds would be used.⁴ MUR 5881(Citizens
14 Club for Growth), Factual and Legal Analysis approved on August 8, 2007 at 9. *See* MUR 5732
15 (Matt Brown for U.S. Senate), Factual and Legal Analysis approved on March 20, 2007 at 11
16 (federal candidate’s solicitation of contributions to state party committees did not give donors actual
17 knowledge that the state party committees would use the funds to support that candidate); MUR
18 5445 (Quentin Nesbitt), First General Counsel’s Report dated February 2, 2005 at 11-12 and
19 Commission Certification dated February 8, 2005 (donor’s admitted recognition that it was likely
20 that “leadership” PACs would support a candidate based on the PACs’ contribution histories did not

⁴ In one case where the Commission found probable cause to believe that excessive contributions were made and received under section 110.1(h)(2) of its regulations, the contributors had contact with an intermediary who in effect advised them that the PACs receiving their contributions would be using their funds to support a specific federal candidate. *See* MURs 4568, 4633, 4634 (Triad Management Services, Inc.).

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1 constitute actual knowledge). *See also* MUR 5019 (Keystone Federal PAC), First General Counsel's
2 Report dated February 5, 2001 at 27-28 and Commission Certification dated March 7, 2001)
3 (although contributors were likely aware that the PAC would contribute to the candidates'
4 committees, it does not appear the contributors knew that a portion of *their own contributions* would
5 be given to a specific candidate) (italics in original).

6 Respondents all deny that Dawson or Van Denburgh had knowledge that their \$5,000
7 contributions to LEAD PAC would be used to fund contributions to the Shadegg Committee.⁵
8 *See* Affidavits attached to Responses. Shadegg, who solicited the contributions from Dawson
9 and Van Denburgh, declares in his affidavit that he never told Dawson or Van Denburgh that the
10 LEAD PAC contributions would be used to contribute to his campaign committee, nor did he tell
11 them of his subsequent decision to authorize LEAD PAC to make the two \$5,000 contributions
12 to the Shadegg Committee. Both Dawson and Van Denburgh corroborate Shadegg's account in
13 their affidavits and deny any knowledge that their LEAD PAC contributions would be used to
14 support the Shadegg Committee. Therefore, it does not appear that Dawson or Van Denburg's
15 \$5,000 contributions to LEAD PAC should be aggregated with their contributions to the Shadegg
16 Committee or were excessive contributions to that committee.

17 Similarly, the available information does not support complainant's allegation that
18 Dawson and Van Denburg used LEAD PAC's name to make alleged \$5,000 excessive
19 contributions to the Shadegg Committee in violation of 11 C.F.R. § 110.4(b) or 2 U.S.C. § 441f.
20 As discussed above, there is no basis on which to conclude that Dawson or Van Denburgh knew

⁵ In their joint response, the committees emphasize that in MUR 5881 (Citizens Club for Growth) the Commission concluded that an inference that some or all of an individual's contribution to a PAC might be used to support a related candidate's authorized committee by itself does not satisfy the regulations' knowledge requirement. They also note that the Commission came to a similar conclusion in MURs 5732 (Matt Brown for U.S. Senate) and 5445 (Quentin Nesbitt).

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1 that the funds they contributed to LEAD PAC would be used to support the Shadegg Committee,
2 and thus no basis on which to conclude that they made a contribution in the name of another.

3 *See* 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b).

4 Therefore, the Commission finds no reason to believe that John Dawson and David S.
5 Van Denburgh violated 2 U.S.C. § 441a or 11 C.F.R. § 110.1(b)(1) by making excessive
6 contributions, and finds no reason to believe that the Shadegg Committee and Ian A.
7 Macpherson, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R.
8 § 110.9 by accepting excessive contributions. The Commission also finds no reason to believe
9 that John Dawson and David S. Van Denburgh, LEAD PAC and Keith Davis, in his official
10 capacity as treasurer, or the Shadegg Committee and Ian A. Macpherson, in his official capacity
11 as treasurer, violated 2 U.S.C. § 441f or 11 C.F.R. § 110.4(b) by making, allowing their names to
12 be used, or by accepting, contributions made in the name of another.

13 Complainant further alleges that the Shadegg Committee and Ian A. Macpherson, its
14 treasurer, should have investigated and refunded the questionable \$5,000 contributions within 30
15 days of receipt. *See* 11 C.F.R. § 103.3(b). Macpherson asserts that there were no unresolved
16 questions of illegality that would compel him or the Shadegg Committee to refund the
17 contributions.⁶ Despite LEAD PAC's association with Congressman Shadegg, it is not affiliated
18 with the Shadegg Committee under the Act and Commission's regulations at 11 C.F.R.
19 § 100.5(g)(5), *see* footnote 3 *supra*, and the two committees have separate contribution limits.
20 Both Dawson and Van Denburgh's individual contributions to the Shadegg Committee and to
21 LEAD PAC were within the contribution limits and do not appear to have been questionable

⁶ Notwithstanding its position that it was under no obligation to do so, the Shadegg Committee refunded the two \$5,000 contributions it received from LEAD PAC on January 23, 2008, the same date as the complaint in this matter.

1 when they were made, as complainant asserts. Therefore, it does not appear that Macpherson,
2 then treasurer of both the Shadegg Committee and LEAD PAC, violated any provision of the Act
3 or Commission's regulations by failing to refund the two \$5,000 contributions at issue.
4 Accordingly, the Commission finds no reason to believe that the Shadegg Committee and Ian A.
5 Macpherson, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R.
6 § 103.3(b).

7 2. In-Kind Contributions

8 Finally, Complainant alleges that LEAD PAC's solicitation and administrative expenses
9 constitute in-kind contributions to the Shadegg Committee because LEAD PAC does not appear
10 to have supported the variety of candidates in 2007 that is expected of a multicandidate
11 committee. The basis for this allegation is that LEAD PAC supported only one candidate
12 (Shadegg) during the first half of 2007. However, as discussed above, LEAD PAC made
13 contributions to other federal candidates (John McCain and Timothy Bee) during the second half
14 of 2007. In addition, LEAD PAC had already qualified for multicandidate status in 2005, and it
15 has made over 100 contributions to over 60 federal candidates and the NRCC during the 2006
16 election cycle. Therefore, as LEAD PAC is a qualified multicandidate committee and does not
17 appear to operate solely to support Shadegg's candidacy, as complainant alleges, LEAD PAC's
18 solicitation and administrative expenses do not constitute in-kind contributions to the Shadegg
19 Committee.⁷ Accordingly, the Commission finds no reason to believe that LEAD PAC and
20 Keith Davis, in his official capacity as treasurer, violated 2 U.S.C. § 441a, and no reason to

⁷ To the extent that complainant implicitly asserts that LEAD PAC must re-qualify for multicandidate status in each election cycle, the Commission's regulations do not require any such requalification. See 11 C.F.R. § 102.2(a)(3) and *Explanation and Justification for Regulations on Multicandidate Committees and Biennial Contribution Limits*, 68 Fed. Reg. 65412, 65413-14.

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- 1 believe the Shadegg Committee and Ian A. Macpherson, in his official capacity as treasurer,
- 2 violated 2 U.S.C. § 441a(f).

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